

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1101

Introduced by Assembly Member Duvall

February 27, 2009

An act to amend Section ~~1050~~ 1605 of the Fish and Game Code, relating to the Department of Fish and Game.

LEGISLATIVE COUNSEL'S DIGEST

AB 1101, as amended, Duvall. ~~Department of Fish and Game: licenses and other entitlements.~~ *Department of Fish and Game: lake and streambed alteration agreements.*

Existing law prohibits a person, state or local governmental agency, or a public utility, from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless prescribed requirements are met, including written notification to the Department of Fish and Game regarding the activity. Existing law requires the department to determine whether the activity may substantially adversely affect an existing fish and wildlife resource and, if so, to provide a draft lake or streambed alteration agreement to the person, agency, or utility.

Existing law prescribes various requirements for lake and streambed alteration agreements and generally prohibits the term of an agreement from exceeding 5 years. Existing law authorizes the department to issue an agreement for a term of longer than 5 years if prescribed conditions are satisfied and prohibits the department from extending an agreement

for more than 5 years. Existing law authorizes time periods related to lake and streambed alteration agreements to be extended by mutual agreement.

This bill would additionally provide for the issuance of a lake or streambed alteration agreement for a term longer than 5 years, and the extension of the term of a lake or streambed alteration agreement for more than 5 years, by mutual agreement.

~~Existing law requires that all licenses, permits, tags, reservations, and other entitlements authorized by the Fish and Game Code be prepared and issued by the Department of Fish and Game.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1605 of the Fish and Game Code is
2 amended to read:

3 1605. (a) (1) Except as otherwise provided in this section, the
4 term of an agreement shall not exceed five years.

5 (2) Notwithstanding paragraph (1), after the agreement expires,
6 the entity shall remain responsible for implementing any mitigation
7 or other measures specified in the agreement to protect fish and
8 wildlife resources.

9 (b) Any entity may request one extension of a
10 previously-approved agreement, if the entity requests the extension
11 prior to the expiration of its original term. The department shall
12 grant the extension unless it determines that the agreement requires
13 modification because the measures contained in the agreement no
14 longer protect the fish and wildlife resources that the activity may
15 substantially adversely affect. ~~In the event~~ If the department makes
16 that determination, the department shall propose measures intended
17 to protect those resources.

18 (c) If the entity disagrees with the department's determination
19 that the agreement requires modification to protect fish and wildlife
20 resources, or with the measures proposed by the department, the
21 disagreement shall be resolved pursuant to the procedures described
22 in subdivision (b) of Section 1603.

1 (d) The department ~~may~~ *shall* not extend an agreement for more
2 than five years, *except by mutual agreement pursuant to Section*
3 *1607*.

4 (e) (1) An original agreement shall remain in effect until the
5 department grants the extension request, or new measures are
6 imposed to protect fish and wildlife resources by agreement or
7 through the arbitration process.

8 (2) Notwithstanding paragraph (1), an original agreement ~~may~~
9 *shall* not remain in effect for more than one year after its expiration
10 date.

11 (f) If the entity fails to submit a request to extend an agreement
12 prior to its expiration, the entity shall submit a new notification
13 before commencing or continuing the activity covered by the
14 agreement.

15 (g) Notwithstanding paragraph (1) of subdivision (a), the
16 department may issue an agreement, that otherwise meets the
17 requirements of this chapter, for a term longer than five years *either*
18 *by mutual agreement pursuant to Section 1607 or* if the following
19 conditions are satisfied:

20 (1) The information the entity provides to the department in its
21 notification meets the requirements of paragraph (1) of subdivision
22 (a) of Section 1602.

23 (2) The entity agrees to provide a status report to the department
24 every four years. The status report shall be delivered to the
25 department no later than 90 days prior to the end of each four-year
26 period, and shall include all of the following information:

27 (A) A copy of the original agreement.

28 (B) The status of the activity covered by the agreement.

29 (C) An evaluation of the success or failure of the measures in
30 the agreement to protect the fish and wildlife resources that the
31 activity may substantially adversely affect.

32 (D) A discussion of any factors that could increase the predicted
33 adverse impacts on fish and wildlife resources, and a description
34 of the resources that may be adversely affected.

35 (3) The department shall review the four-year status report, and
36 conduct an onsite inspection to confirm that the entity is in
37 compliance with the agreement and that the measures in the
38 agreement continue to protect the fish and wildlife resources. If
39 the department determines that the measures in the agreement no
40 longer protect the fish and wildlife resources that are being

1 substantially adversely affected by the activity, the department, in
2 consultation with the entity, and within 45 days of receipt of the
3 report, shall impose one or more new measures to protect the fish
4 and wildlife resources affected by the activity. If requested to do
5 so by the entity, the department shall make available the
6 information upon which it determined the agreement no longer
7 protects the affected fish and wildlife resources. If the entity
8 disagrees with one or more of the new measures, within seven
9 days of receiving the new measures, it shall notify the department,
10 in writing, of the disagreement. The entity and the department shall
11 consult regarding the disagreement. The consultation shall be
12 completed within seven days after the department receives the
13 entity's notice of disagreement. If the department and entity fail
14 to reach agreement, the entity may request, in writing, the
15 appointment of a panel of arbitrators to resolve the disagreement.
16 The panel of arbitrators shall be appointed within 14 days of the
17 completed consultation. The panel of arbitrators shall issue a
18 decision within 14 days of the date it is established. All other
19 provisions of subdivision (b) of Section 1603 regarding the panel
20 shall apply to any arbitration panel established in accordance with
21 ~~this subdivision~~ *paragraph*. If the entity fails to provide timely
22 status reports as required by this subdivision, the department may
23 suspend or revoke the agreement.

24 (4) The agreement shall authorize department employees to
25 conduct onsite inspections relevant to the agreement, upon
26 reasonable notice. Nothing in this section limits the authority of
27 department employees to inspect private or public sites.

28 (5) Except as provided in paragraph (3), subparagraph (D) of
29 paragraph (4) of subdivision (a) of Section 1602 and the time
30 periods to process agreements specified in this chapter do not apply
31 to agreements issued pursuant to this section.

32 (h) Each region of the department shall log the notifications of
33 activities for which a long-term agreement is being considered
34 pursuant to subdivision (g). The log shall list the date the
35 notification was received by the department, a brief description of
36 the proposed activity, and the location of the activity. Each item
37 shall remain on the log for one year. Upon written request by any
38 person, a regional office shall send the log to that person monthly
39 for one year. A request made pursuant to this ~~paragraph~~ *subdivision*
40 may be renewed annually.

1 ~~SECTION 1. Section 1050 of the Fish and Game Code is~~
2 ~~amended to read:~~

3 ~~1050. (a) All licenses, permits, tags, reservations, and other~~
4 ~~entitlements authorized by this code shall be prepared and issued~~
5 ~~by the department.~~

6 ~~(b) The commission shall determine the form of all licenses,~~
7 ~~permits, tags, reservations, and other entitlements and the method~~
8 ~~of carrying and displaying all licenses, and may require and~~
9 ~~prescribe the form of applications therefor and the form of any~~
10 ~~contrivance to be used in connection therewith.~~

11 ~~(c) Whenever any provision of this code provides for a license,~~
12 ~~permit, tag, reservation, application, or other entitlement, the~~
13 ~~commission, in accordance with the provision, shall prescribe the~~
14 ~~terms and conditions under which the license, permit, tag,~~
15 ~~reservation, application, or other entitlement shall be issued and~~
16 ~~the department shall issue the license, permit, tag, reservation,~~
17 ~~application, or other entitlement in accordance therewith and with~~
18 ~~the applicable provisions of law.~~

19 ~~(d) Whenever this code does not specify whether a fee is to be~~
20 ~~collected, or does not specify the amount of a fee to be collected~~
21 ~~for the issuance of any license, permit, tag, reservation, application,~~
22 ~~or other entitlement, the commission may establish a fee or the~~
23 ~~amount thereof by regulation. The commission also may provide~~
24 ~~for the change in the amount of the fee in accordance with Section~~
25 ~~713. However, a fee shall not exceed the reasonable costs incurred~~
26 ~~by the department in implementing and administering the program~~
27 ~~or activity to which the license, permit, tag, reservation, application,~~
28 ~~or other entitlement is related.~~

29 ~~(e) Whenever this code provides for a license, permit, tag,~~
30 ~~reservation, or other entitlement, the commission may establish a~~
31 ~~nonrefundable application fee, not to exceed seven dollars and~~
32 ~~fifty cents (\$7.50), that is sufficient to pay the department's costs~~
33 ~~for issuing the license, permit, tag, reservation, or other entitlement~~
34 ~~and may adjust the application fee in accordance with Section 713.~~